(1) Supreme Court, U.S.
FILED

162

No 09 1411 MAY 17 2010

OFFICE OF THE CLERK

Supreme Court of the United States

DANIEL E. STOLTZFUS and SAVILLA E. STOLTZFUS

Petitioners

v.

PSR KIRKWOOD LLC , PSR LANCASTER LLC , LITTLE ELK CREEK FARM LLC

Respondents

On Petition For Writ Of Certiorari
To The Supreme Court Of Pennsylvania

PETITION FOR WRIT OF CERTIORARI

RECEIVED
MAY 19 2010
OFFICE OF THE CLERK
SUPREME COURT, U.S.

Daniel E Stoltzfus
245 Cemetery Road
Nottingham, PA 19536
(215) 239-7553

QUESTIONS PRESENTED FOR REVIEW

A Whether, where a mortgager was not served proper notice pursuant to 35 P.S.§ 1680.403c in foreclosure proceedings, deprives the trial court of jurisdiction to allow a Sheriff Sale of the property ?

B Whether a court's subject matter, or lack thereof, can be questioned for the first time on appeal?

C Whether a trial court lacked the subject matter jurisdiction to adjudicate this case, in which the mortgagers were deprived of means to determine the validity of the claim against them ?

D Whether the Petitioner's procedural due process rights were violated as a result of the lower courts' failure to provide Petitioners with procedural due-process ?

PARTIES TO THE PROCEEDINGS

William Bryan Byler -
owner of PSR KIRKWOOD LLC

SAMUEL A. GOODLEY -
owner of LITTLE ELK CREEK FARM LLC

ERIC L. WINKLE -
owner of PSR LANCASTER LLC

The above parties - individuals are also known as the named members of the law firm
BYLER , GOODLEY & WINKLE P. C.
Attorneys-at-law
363 West Roseville Pike
Lancaster , Pennsylvania 17601

DISCLOSURE STATEMENT

Petitioners, Daniel E. and Savilla E. Stoltzfus, are not a corporation.

TABLE OF CONTENTS

	Page
STATEMENT OF THE PETITION	1
STATEMENT OF THE BASIS OF JURISDICTION	6
STATEMENT OF CONSTITUTIONAL PROVISIONS AND STATUES INVOLVED	7
STATEMENT OF REASONS FOR ALLOWENCE OF APPEAL	8
ORDER FOR REVIEW	Appendix A
PETITION FOR ALLOCATOR IN THE SUPREME COURT OF PA . . . . . Including: - ACT 91 NOTICE exhibit A - ORDERS IN QUESTION att # 1 - OPINIONS DELIVERED att # 2	Appendix B
FORM OF ACT 91 OF 1983	Appendix C
LOAN INTEREST & PROTECTION LAW Act of Jan. 30 , 1974 ,P.L.13 , No.6	Appendix D
SETTLEMENT AGREEMENT AND MUTUAL RELEASE	Appendix E
DEED of subject property	Appendix F
NOTE - REFERENCE TO OOAHP	Appendix G

TABLE OF AUTHORITIES

PAGE

Philadelphia Housing Authority v. Barbour, 592 A.2d 47, 405 Pa.Super. 140, Super. 1991, appeal granted 598 A.2d 284, 528 Pa. 631, affirmed 615 A.2d 339, Pa. 212..... 9

Bernhard v. Bernhard, 668 A.2d 546, 548 (Pa.Super. 1995)..... 10

Clay v. Advance Computer Applications, 370 Pa.Super. 497, 504, 536 A.2d 1375, 1379..... 10

In re Patterson's Estate, 341 Pa. 177, 180, 19 A.2d 165, 166 (Pa,1941)..... 10

Louisville & Nashville Railroad v. Mottley 211 U.S. 149 (1908)..... 10

Saadeh v. Farouki, 107 F. 3d 52 (D.C. Cir. 1997)..... 11

Fuentes v. Shevin, 407 U.S. 67 (1972)..... 12

Mathews v. Eldridge, 424 U.S. 319 (1976)..... 12

STATUTES

35 P.S. § 1680.402.....2...5...6...7...8

35 P.S. § 1680.403.....6....8...9

STATEMENT OF THE PETITION

The history of this case is quite in contrast with the outstanding amount of mortgage foreclosures that have occurred throughout the state of Pennsylvania recently. From the very beginning of this case, Petitioners have suffered the absence of certain provisions[1] which the Pennsylvania state laws are specifically construed to provide.

The procedural history of this case is voluminous. Under the Lancaster County docket number CI-05-07927 of which the initial mortgage foreclosure complaint arises from, there are 700 pages, followed by numerous other legal proceedings. Throughout this time petitioners have hired a number of legal representatives, all of which have ended their representation for the petitioners for various reasons.

The basis of this appeal arises out of a mortgage foreclosure complaint filed by the Respondents then client, Old Order Amish Helping Program,(OOAHP) the bank that Petitioners issued a mortgage to as security for a loan. To understand how and why Respondents are involved at this point, it is essential to know that the Respondents are each Limited

[1] There was never any consideration given at any time on behalf of Petitioners' circumstances or whether their circumstances could be relieved by provisions under the law that then in turn the validity of the claim against the Petitioners may be determined. See Provisions of law in appendix D sections 401, 403, and specifically 408.

Liability Companies owned and operated by the named members of the Law Firm of Byler , Goodly, Winkle that represented the then Mortgagee of the Petitioners, Old Order Amish Helping Program. After Sheriff Sale, Respondents purchased Petitioners' property from a third party.

It is also essential to know they Petitioners were once of the Old Order Amish religion. When they began to exercise their privileges more freely , Old Order Amish Helping Program within the Old Order Amish Church[2] started foreclosure Proceedings on Petitioners without an adequate Act 91 Notice ,35 P. S. § 1680.402c .. Act 91 governs appropriate procedure in Pennsylvania before instituting foreclosure actions. When applicable, it is essential in Pennsylvania that an adequate Act 91 Notice be sent out by certified mail, before instituting a foreclosure action.

Accordingly, the Respondents filed a complaint on behalf of their client, OOAHP against Petitioners on September 13, 2005 in Lancaster County Courthouse under docket number CI-05-07927. On the same date, Respondents filed an affidavit stating that they had sent notice under the Homeowner's Emergency Mortgage Assistance Act , also commonly known as

---

2 Old Order Amish Church governs its member's legal benefits by way of OOAHP through the note - para.3 , . . . Notwithstanding any law or usage . . .and . . .waives the benefits of all laws . .. See Note appendix G , which is in lieu with the tradition.

an "Act 91 Notice", to Petitioners by first class and certified mail on June 16, 2005.

However, Petitioners have not received this Act 91 Notice and Respondents have never been able to produce the certified mail receipt of delivery or non-delivery. Moreover, the language in the **Act 91 Notice allegedly sent to Petitioners demanded the full amount of the balance of the mortgage** instead of giving Petitioners notice of the delinquency at least 30 days before asking for the full amount of any mortgage obligation.

After various legal maneuvering[3] , a settlement agreement was entered by both parties and by court order on November 13, 2006 [4] whereby Petitioners would have an extra month to refinance the mortgage, and if they did not, a consent judgment would be entered against them by the Respondents. Accordingly, after not being able to refinance the mortgage, a consent judgment was entered against Petitioners on January 10, 2007. On June 27, 2007

[3] As an alternative, Petitioners council sent written notice to Respondents law firm requesting to accept delinquent payments and continued payments as per the note. In writing this request was denied by way of the mortgagee's only acceptance would be complete payoff and or agreement with a stipulated judgment . In the immediate proceedings the court upheld Amish Aid counter claim defendant to deny any relief to defendant Petitioners , then followed by Settlement Agreement -Mutual Release included in appendix E

[4] The Settlement agreement Mutual Release itself cannot be established as a law to waive section 408 — Notwithstanding any law , the provisions of this act may not be waived by any oral or written agreement.(as included in Appendix D)

the Petitioners' property sold at Sheriff Sale and was immediately re-purchased by Respondent Attorneys from the third party.[5]

Shortly thereafter, the Petitioners hired a second attorney who filed a petition to set aside the sheriff's sale on August 3 , 2007. On December 6 , 2007 and December 12 , 2007 the court entered duplicate orders denying the Petitioners' petition to set aside the sheriff's sale on the grounds that Petitioners' attorney failed to comply with the court's discovery and brief deadlines. On December 19, 2007, the same attorney filed a petition to stay the proceedings and permit the Petitioners to file a brief nunc pro tunc. The same day the petition was denied. Finally, on January18, 2008 the Petitioners filed an appeal to the Superior Court of the trial court's December 19 , 2007 order. However, the appeal was subsequently quashed by the Superior Court on the ground that the appeal was untimely and not based on an appealable.

After becoming involved with the Petitioners' case and learning of all the injustices that have transpired to the Petitioners[6] by the hands of the

---

[5] According to the deed in appendix F the Respondents' purchased said property from Mr. Glick by certain agreement on November 15 2007, (see second to last paragraph. In the deed.) This comes within the time frame of the court's August 6 order.

[6] As an example thereof , Petitioners were not notified or involved with negotiations leading to said agreement in the second to last paragraph of the deed (see appendix F) by way of their attorney's request to the

Respondents and Respondents' former client , Petitioners' last attorney , has performed a variety of legal maneuvers,[7] bringing things around full circle to the original foreclosure action. Consequently, after learning there never was proper notice under Act 91 , 35P. S. § 1680.402c(a) given to the Petitioners , the Petitioners' attorney then filed a motion to set aside the sheriff's sale on March 19 , 2009.[8] Said motion was denied the same day without any consideration given thereto.[9] Consequently, Petitioners' attorney then filed an appeal in the Superior Court on April 8 , 2009.The appeal was quashed by the Superior Court on August 4 , 2009 most likely as a result of there being a previous appeal that was untimely.

The last Court Order presently being appealed is the Court Order dated February 16\ 2010, issued by the Pennsylvania Supreme Court, whereby Petitioners' Petition for allowance of appeal was denied by the Court.[10]

---

court to withdraw from representing them , even while discovery as per the court's order was left undone.

[7] The U. S. District Court accepted the settlement Agreement as Law and relief to the Petitioners was denied.

[8] As before the judge in a previous bankruptcy court Respondents were unable to present the required notice receipt or evidence thereof.

[9] Shortly thereafter, on April 21 , 2009 Petitioners were evicted without further notice .

[10] There was no opinion attached.

STATEMENT OF THE BASIS OF JURISDICTION

It is believed and therefore proffered that pursuant to this Court's Rule10, "A state court or United States court of appeals has decided an important question of federal law that has not been , but should be , settled by this court , or has decided an important federal question in a way that conflicts with relevant decisions of this court."

The last Court Order presently being appealed is the Court Order dated February 16, 2010,[11] issued by the Pennsylvania Supreme Court, whereby Petitioners' Petition for allowance of Appeal was denied by the Court. Petitioners' appeal to the Pennsylvania Supreme Court was based upon the failure of a Pennsylvania trial court to set aside a Sheriff Sale on the basis the trial court lacked subject matter jurisdiction to originally hear the case in the first place as a result of the Respondents' failure to abide by a Pennsylvania Statute, Act 91, 35 P.S. § 1680.402c, which governs appropriate procedure in Pennsylvania before instituting foreclosure actions.

It is alleged that this failure violated Petitioners" procedural due process rights. As a result it is alleged that 28 U.S.C. §2403(b) may apply and Petitioners" are therefore serving the Attorney General of the State of Pennsylvania with this initial writ.

[11] Petitioners or their council received no opinion, in writing or any other, with this order. See appendix A

STATEMENT OF CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

Petitioners are alleging that the initial trial court lacked subject matter jurisdiction to originally hear the case in the first place as a result of the Respondents' failure to abide by a Pennsylvania Statute, Act 91, 35 P.S. § 1680.402c, which governs appropriate procedure in Pennsylvania before instituting foreclosure action.

Petitioners are alleging that their procedural and substantive due process rights inherent by way of the Fourteenth Amendment[12] of the United States Constitution were violated as a result of the State of Pennsylvania and Respondents' failure to appropriately enforce their own state court procedures governed through Act 91, 35 P.S. § 1680.402c, which governs appropriate procedure in Pennsylvania before instituting foreclosure actions.

[12] . . . nor shall any State deprive any person of life , liberty , or property, without due process of law;

STATEMENT OF REASONS FOR ALLOWANCE OF APPEAL

The Supreme Court of the United States of America has consistently held that a court cannot hear a case unless it has jurisdiction to do so.

In the instant case, the Respondents when acting as counsel for the original Mortgagee, failed to provide proper notice requirements to the Petitioners before instituting foreclosure proceedings against them pursuant to the notice requirements of Act 91. For instance, according to Act 91, 35 P.S. § 1680.402c(a),

> Before any mortgagee may accelerate the maturity of any mortgage obligation covered under this article, commence any legal action foreclosure to recover under such obligation, or take possession of any security of the mortgage debtor for such mortgage obligation, such mortgagee shall give the mortgagor notice as described in section 403-C.

As set forth in Act 91, 35 P.S. § 1680.403c(b)(1), this notice shall "advise the mortgagor of his delinquency or other default under the mortgage, including an itemized breakdown of the total amount past due...". Moreover, Section 1680.403c(b)(2) of the Act requires that the mortgagee give the mortgagor this notice of delinquency amount at least 30 days before asking for the full amount of any mortgage obligation or instituting any legal action.

However, in looking at paragraph A, page 3 of the Act 91 Notice allegedly sent to Petitioners by the Respondents the paragraph states that the Respondents have failed to pay four monthly payments and further states that "As a result, the remaining balance is accelerated."

However, asking for the full amount of the remaining balance of the mortgage before giving the mortgagor notice of the delinquency 30 days prior is a violation of the notice requirement of Act 91. In addition, although it was alleged in the Respondent's Affidavit that the Act 91 Notice was sent, the Petitioners did not receive said notice. Moreover, Petitioners have not seen the returned Certified Mailing of the Act 91 Notice allegedly sent to them, signed or returned unsigned, as is described in Respondents' Affidavit.

Notice requirements pertaining to foreclosure proceedings are jurisdictional and, where applicable, failure to comply therewith will deprive the court of jurisdiction to act. Philadelphia Housing Authority v. Barbour, 592 A.2d 47, 405 Pa.Super. 140, Super. 1991, appeal granted 598 A.2d 284, 528 Pa. 631, affirmed 615 A.2d 339, 532 Pa. 212. Based upon the foregoing, the Respondents and Mortgagee did not properly invoke the jurisdiction of the trial court because Respondents failed to provide Petitioners with the notice required by 35 P.S. § 1680.403c.

Pennsylvania law has consistently held that, "The action or inaction of the parties cannot bestow subject matter jurisdiction upon a court that otherwise lacks it." Bernhard v. Bernhard, 668 A.2d 546, 548 (Pa.Super. 1995); Clay v. Advanced Computer Applications, 370 Pa.Super. 497, 504, 536 A.2d 1375, 1379 (1988) (en banc), modified, 522 Pa. 86, 559 A.2d 917 (1989) (citations omitted).

Moreover, it has consistently been held that, "The want of jurisdiction over the subject-matter may be questioned at any time. It may be questioned either in the trial court, before or after judgment, or for the first time in an appellate court, and it is fatal at any stage of the proceedings, even when collaterally involved." In re Patterson's Estate341 Pa. 177, 180, 19 A.2d 165, 166 (Pa.1941)

Likewise, the same has consistently been held by this Supreme Court of the United States. In the case, Louisville & Nashville Railroad v. Mottley 211 U.S. 149 (1908), in the opinion of the Court given by Justice Moody, it concludes ..."in our opinion the court below was without jurisdiction of the cause. It further concludes, "Neither party has questioned that jurisdiction, but it is the duty of this court to see to it that the jurisdiction of the Circuit Court, which is defined and limited by statute, is not exceeded. This duty we have frequently performed of our own motion."

This Court came to a similar conclusion in the case of Saadeh v. Farouki, 107 F. 3d 52 (D.C. Cir. 1997).

In conclusion this case is an instance where the sheriff lacked the authority to sell the Petitioners' property because the trial court was without subject matter jurisdiction to give the sheriff such authority.

Petitioners' procedural and substantive due process rights were violated as a result of the State of Pennsylvania and Respondents' failure to appropriately enforce their own state court procedures governed through Act 91, 35 P.S. § 1680.402c, which governs appropriate procedure in Pennsylvania before instituting foreclosure actions.

By way of motion to the original trial court and subsequent appeals to various appellate courts, it has been made known to such courts, that provisions in Pennsylvania law, known as Act 91, designed to provide due process rights to individuals facing foreclosure, have been violated.[13] However, every one of these courts have failed to address the issue at all. Subsequently, Petitioners have been deprived of due process of law by the State of Pennsylvania as

[13] *Due Process is afforded by the kinds of NOTICE or HEARING that are aimed at establishing the validity of the claim against the debtor. (A)If the Mortgagee intends to foreclose as it is in this case, then the foreclosure must be preceded by the proper requirements thereto - as due process. (B)If the lender files a suit to collect a debt then a 30 day notice must precede any legal action - as due process. See appendix D - Section403.*

conferred by the Fourteenth Amendment of the United States.

In the case of Fuentes v. Shevin, 407 U.S. 67 (1972), the Supreme Court was called upon to question whether certain statutory procedures violated the Fourteenth Amendment's guarantee that no state deprive any person of property without due process of law. The Court stated "... For more than a century the central meaning of procedural due process has been clear . . . Parties whose rights are to be affected are entitled to be heard; and in order that they may enjoy that right they must first be notified."

In Matthews v. Eldridge, 424 U.S. 319 (1976), the Court set forth three factors that normally determine whether an individual has received the "process" that the Constitution finds "due". The Court held that "First, the private interests that will be affected by the official action; second the risk of an erroneous deprivation of such interest through the procedures used, and the probative value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." By weighing these concerns, courts can determine whether a state has met the "fundamental requirement of due process"- "the opportunity to be heard at a meaningful time and in a meaningful manner."

By failing to enforce the Petitioners' protections granted by Act 91, the State of Pennsylvania has effectively denied Petitioners Due Process Rights inherent in the Fourteenth Amendment.

COURT'S SYMBOL

SUPREME COURT OF PENNSYLVANIA

Middle District

Irene M. Bizzoso, Esq.
Acting Prothonotary
Elisabeth E. Zisk
Chief Clerk

601 Commonwealth Avenue,
Suite 4500
Harrisburg, Pa 17106
(717) 787-618
www. pacourts.us

February 16, 2010

Alexander Geoffrey Tuttle, Esq.
2880 Bergey Rd Ste H
Hatfield, PA 19440

RE: PSR Kirkwood, LLC v. Stoltzfus, D.
No. 165 MM 2009
Lower Appellate Court Docket No: 617 MDA 2009
Trial Court Docket No: CI-08-07341

Dear Mr. Tuttle:

Enclosed please find a certified copy of an order dated February 16, 2010 entered in the above-captioned matter.

Very Truly Yours,
Office of the Prothonotary

/hms
Enclosure
cc: The Honorable Howard F. Knisely, Judge
Eric L. Winkle, Esq.

APPENDIX A

IN THE SUPREME COURT OF PENSLYVANIA
MIDDLE DISTRICT

PSP KIRKWOOD, LLC, LITTLE	:	No. 165 MM
ELK CREEK	:	2009
FARM, LLC AND PSR	:	
LANCASTER, LLC,	:	
Respondents	:	
v.	:	
DANIEL E. STOLTZFUS AND	:	
SAVILLA E. STOLTZFUS,	:	
Petitioners	:	

ORDER

PER CURIAM

AND NOW, this 16th day of February, 2010, the petition for Allowance of Appeal, treated as a Petition for Review, is **DENIED.**

TRUE & CORRECT COPY
ATTEST: February 16, 20010

"s/"
Elizabeth E. Zisk, Chief Clerk